

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VAN CHESTER THOMPkins, JR.

Petitioner,

v.

Case No. 05-CV-70188-DT
Honorable Patrick J. Duggan

MARY BERGHUIS,

Respondent.

**OPINION AND ORDER GRANTING RESPONDENT'S MOTION FOR STAY
PENDING STATE'S APPEAL OF AMENDED JUDGMENT GRANTING WRIT
OF HABEAS CORPUS**

Petitioner Van Chester Thompkins, Jr., ("Petitioner"), presently confined at the Lakeland Correctional Facility in Coldwater, Michigan, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On September 28, 2006, this Court denied Petitioner's request for habeas relief and subsequently certified three claims for appeal: (1) whether Petitioner's confession was obtained in violation of the Fifth Amendment; (2) whether Petitioner's right to due process was violated when the prosecution offered evidence of an accomplice-witness' jury verdict and guilty plea conviction on charges stemming out of the same incident giving rise to Petitioner's charges; and (3) whether Petitioner was denied effective assistance of counsel when his counsel failed to request a jury instruction with respect to the charge against Petitioner's accomplice and his jury verdict and guilty plea conviction.

On November 19, 2008, the Sixth Circuit issued an opinion affirming this Court's

denial of Petitioner's request for habeas relief based on his prosecutorial misconduct claim, but reversing the Court's decision with respect to the other two claims certified for appeal. *Thompkins v. Berghuis*, 547 F.3d 572 (6th Cir. 2008). The Sixth Circuit remanded the matter, instructing that "the district court order that [Petitioner] be released from state custody unless the State of Michigan commences a new trial within 180 days of the final federal-court judgment in this case." *Id.* at 592. This Court entered an Amended Judgment in accordance with the appellate court's instructions on March 5, 2009.¹ Respondent now has filed a petition for writ of certiorari in the United States Supreme Court. *Berghuis v. Thompkins*, No. 08-1470 (filed May 26, 2009). Presently before this Court is Respondent's motion to stay the Amended Judgment pending a final decision on its appeal to the Supreme Court.

Federal Rule of Appellate Procedure 23(c) provides:

While a decision ordering the release of a prisoner is under review, the prisoner must— unless the court or judge rendering the decision, or the court of appeals, or the Supreme Court, or a judge or justice of either court orders otherwise— be released on personal recognizance, with or without surety.

The United States Supreme Court has interpreted this rule as "undoubtedly creat[ing] a presumption of release from custody . . ." *Hilton v. Braunskill*, 481 U.S. 770, 774, 107 S. Ct. 2113, 2118 (1987). The *Hilton* Court further advised, however, that a court may delay the release of a successful habeas petitioner if the court, in its discretion, finds a stay justified.

¹In accordance with the Amended Judgment, the State is required to release Petitioner in the beginning of September 2009, unless it commences a new trial.

Because this Court believes that a decision by the United States Supreme Court on Respondent's petition for a writ of certiorari may be forthcoming within the next 30-60 days,² the Court concludes that a stay of the Amended Judgment for a period of sixty (60) days is justified.

If the Supreme Court denies the petition for writ of certiorari, Petitioner shall be released from state custody unless the State of Michigan commences a new trial within ten (10) days of the Supreme Court's decision. If the Supreme Court grants the petition, Respondent shall have sixty (60) days to seek and obtain a stay of further proceedings.

Accordingly,

IT IS ORDERED, that Respondent's Motion for Stay Pending State's Appeal of the Amended Judgment Granting a Writ of Habeas Corpus is **GRANTED** and the Amended Judgment is **STAYED** for sixty (60) days.

DATE:

PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copies to:

Elizabeth L. Jacobs, Esq.

Brad H. Beaver, Esq.

²According to a June 24, 2009 docket entry, Respondent's petition has been distributed for Conference of September 29, 2009. *Berghuis v. Thompson*, No. 08-1470 (S. Ct.)